

FILED

JAN 23 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

**CHARLES WILLIAMSON
TALBOT**

Lawyer (Bar No. 7448).

Proceeding No. 13#00080

STIPULATION TO REPRIMAND AND
PROBATION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to reprimand and probation is entered into by the Washington State Bar Association (Association), through disciplinary counsel Kevin Bank and Respondent lawyer Charles Williamson Talbot.

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to him. Respondent chooses to resolve this

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1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
2 avoid the risk, time, expense attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on May 13,
5 1977.

6 **II. STIPULATED FACTS**

7 2. Respondent owns Talbot & Associates, P.S., a law firm in Tacoma.

8 3. Respondent practices in the areas of social security disability, workers
9 compensation, and personal injury.

10 4. Respondent frequently represents clients before the Washington State Department of
11 Labor and Industries (L&I) on a contingency basis.

12 5. Respondent receives biweekly or monthly disability checks from L&I on behalf of
13 clients.

14 6. Respondent deposits the L&I checks in his trust account.

15 7. As permitted by state law, Respondent deducts administrative expenses of 5% (not to
16 exceed \$40) from the disability checks he receives from L&I on behalf of clients.

17 8. After deducting the expenses, Respondent arranges for the deposit of the client's
18 portion into the client's bank account, mails a check to his client, or has the client pick up the
19 check at Respondent's office.

20 9. Before obtaining his/her disability payment from L&I, a worker must submit a
21 "worker verification form" (WVF).

22 10. The WVF requires the worker to certify, under penalty of perjury, that he or she did
23 not work and was unable to work during the relevant time period due to injury.

1 11. The certification requires the worker to acknowledge that a false statement about his
2 or her activities or physical condition would result in a refund of benefits, in addition to
3 potential civil or criminal penalties.

4 12. The certification also requires the worker to agree to notify the L&I claim manager if
5 he or she performs any work, paid or unpaid, or if a doctor releases him or her for work.

6 13. Before 2008, the practice in Respondent's office was to have clients sign one
7 undated WVF with all the relevant information filled in.

8 14. The undated but signed form was then used as a template for preparation of future
9 WVFs.

10 15. Each month thereafter, Respondent's paralegals would call the client to confirm that
11 the client had not worked during the relevant time period, then fill in the relevant dates on a pre-
12 signed WVF, and fax the WVF to L&I for processing.

13 16. Between 2008 and 2009, one of Respondent's paralegals made some changes to the
14 procedure for processing WVFs.

15 17. Under the new procedure, clients continued to personally sign an original, undated
16 WVF for the first month only.

17 18. When subsequent WVFs were prepared on behalf of a client, Respondent's
18 paralegals would photocopy the signature of the client and paste it onto a new WVF form.

19 19. The paralegals would then date the WVF, fill in the remaining information, and
20 submit it to L&I.

21 20. Under the new procedure, some clients were called before their WVF forms were
22 submitted, while others were not.

23 21. Respondent's paralegals continued to communicate with clients at least monthly but
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1 not necessarily on or around the dates the WVFs were prepared and submitted.

2 22. Respondent was generally aware of the procedures used by his paralegals in the
3 handling of WVFs but did not instruct his staff to change them.

4 23. Respondent relied on his paralegals to complete and submit all the WVFs submitted
5 to L&I.

6 24. Respondent did not explain to his clients that each WVF needed to be personally
7 reviewed and signed by the client under penalty of perjury prior to submitting it to L&I.

8 25. Respondent did not review the WVFs before they were submitted.

9 26. Respondent did not monitor the communications between his clients and paralegals
10 although he was generally aware of ongoing communications with the clients as these would be
11 reflected in monthly status reports prepared by the paralegals.

12 27. Respondent's paralegals continued using the "photocopy and paste" procedure for
13 completing WVFs until December 2011.

14 28. Respondent's paralegals input information onto WVFs without obtaining an original
15 signature from the client on each WVF submitted to L&I.

16 29. Respondent's paralegals offered the pre-signed WVFs to L&I as true.

17 30. Respondent's paralegals knew that the pre-signed WVFs were not reviewed,
18 personally signed or completed by the client prior to submission to L&I.

19 31. Respondent's paralegals submitted such WVFs to L&I for over thirty clients.

20 ***The Wood Matter***

21 32. Between 2008 and 2011, Respondent represented Randy Wood in a workers'
22 compensation matter.

23 33. In 2009, L&I found that Mr. Wood had been injured on the job and began paying
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1 him time loss benefits.

2 34. On September 1, 2009, Mr. Wood personally signed a WVF certifying under penalty
3 of perjury that he did not work and was not able to work from February 28, 2009 until August
4 25, 2009.

5 35. Thereafter, on a monthly basis, Respondent's paralegal would fill in the correct dates
6 and then photocopy and paste Mr. Wood's signature onto each WVF submitted after September
7 1, 2009.

8 36. Although Mr. Wood was not contacted before each WVF was submitted,
9 Respondent's staff did maintain contact with Mr. Wood.

10 37. There were two instances in which Mr. Wood's benefits were cut off by L&I.

11 38. In both instances, Respondent was successful in reinstating Mr. Wood's benefits.

12 39. In the first instance, Mr. Wood admitted that he had worked while his benefits were
13 cut off. The appropriate information was obtained and submitted to L&I and the appropriate
14 adjustment was made to Mr. Wood's retroactive benefits.

15 40. In the second instance, L&I suspended Mr. Wood's benefits from July 2011 to
16 September 2011.

17 41. On September 7, 2011 Respondent's paralegal called Mr. Wood and asked him if
18 had worked during the second suspension period.

19 42. Mr. Wood told Respondent's paralegal he had not worked during that period.

20 43. In fact, Mr. Wood had worked during the suspension period, and he continued
21 working until November 2011.

22 44. Respondent's office conveyed to L&I that Respondent had not worked during the
23 period of the second suspension of benefits.

1 45. Based on that information, Respondent received a retroactive benefit payment from
2 L&I after his benefits were reinstated in September 2011.

3 46. Mr. Wood states that he never authorized Respondent and/or Respondent's office
4 staff to reproduce his signature on the WVF. Respondent asserts that that all clients were told
5 when they signed the first WVF form that Respondent's office would complete and submit
6 future WVF forms on behalf of clients by filling in the appropriate dates and other information.

7 47. From the fall of 2009 until November 2011, except during the periods when benefits
8 were suspended, Respondent's office received Mr. Wood's bi-weekly workers' compensation
9 payment of approximately \$1,300 from L&I.

10 48. Respondent's office deposited Mr. Wood's L&I checks into Respondent's trust
11 account.

12 49. Respondent's office deducted \$40 from each check for Respondent's administrative
13 expenses.

14 50. After deducting his expenses, Respondent's office prepared a check for Mr. Wood
15 to pick up at Respondent's office.

16 51. Mr. Wood picked up the checks from Respondent's office.

17 52. Mr. Wood received disability payments from July to November 2011, during a
18 period in which he was working,

19 53. Mr. Wood was not entitled to disability payments while he was working.

20 54. In late 2011, L&I learned that Mr. Wood had returned to work in July 2011.

21 55. L&I conducted an investigation and concluded that one of Respondent's paralegals
22 had copied and pasted Mr. Wood's signatures onto WVFs submitted to L&I.

23 56. In early December 2011, L&I notified Respondent of its investigation.
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1 57. Upon learning of L&I's investigation, Respondent changed his office practices and
2 began sending all WVFs to clients with instructions for the clients to review, sign and send the
3 WVFs to L&I themselves.

4 58. The submission of the WVFs while Mr. Wood was employed resulted in
5 overpayments to Mr. Wood totaling \$13,563, in addition to L&I's investigation costs.

6 59. L&I assessed Respondent for the \$13,563 overpayment.

7 60. Respondent made the payment to L&I.

8 61. L&I later recovered \$7,857.36 of this amount from Mr. Wood directly.

9 62. L&I then refunded 7.857.36 to Respondent.

10 III. STIPULATION TO MISCONDUCT

11 63. By failing to make reasonable efforts to ensure that his non-lawyer staff followed
12 procedures compatible with the RPC and/or to ensure that his firm had in effect measures giving
13 reasonable assurance that his non-lawyer staff followed procedures compatible with the RPC,
14 Respondent violated RPC 5.3.

15 64. By failing to adequately explain to clients that each WVF must be personally
16 reviewed and signed under penalty of perjury before being submitted to L&I, Respondent
17 violated RPC 1.4(b).

18 65. By failing to establish procedures to assure that the WVFs submitted on behalf of
19 his clients were accurate and properly executed, Respondent violated RPC 1.3.

20 IV. PRIOR DISCIPLINE

21 66. Respondent has no prior discipline.

22 V. APPLICATION OF ABA STANDARDS

23 67. The following American Bar Association Standards for Imposing Lawyer Sanctions
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1 (1991 ed. & Feb. 1992 Supp.) (“ABA Standards”) apply to Respondent’s failure to supervise his
2 non-lawyer assistants:

3 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
4 conduct that is a violation of a duty owed as a professional with the intent to obtain a
benefit for the lawyer or another, and causes serious or potentially serious injury to a
client, the public, or the legal system.

5 **7.2 Suspension is generally appropriate when a lawyer knowingly engages in
6 conduct that is a violation of a duty owed as a professional and causes injury or
potential injury to a client, the public, or the legal system.**

7 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
conduct that is a violation of a duty owed as a professional and causes injury or potential
injury to a client, the public, or the legal system.

8 7.4 Admonition is generally appropriate when a lawyer engages in an isolated
9 instance of negligence that is a violation of a duty owed as a professional, and causes
little or no actual or potential injury to a client, the public, or the legal system.

10 68. The following ABA Standards apply to Respondent’s failure to communicate with
11 his clients:¹

12 4.41 Disbarment is generally appropriate when:

13 (a) a lawyer abandons the practice and causes serious or potentially serious
injury to a client; or

14 (b) a lawyer knowingly fails to perform services for a client and causes
serious or potentially serious injury to a client; or

15 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

16 4.42 Suspension is generally appropriate when:

17 (a) a lawyer knowingly fails to perform services for a client and causes
injury or potential injury to a client, or

18 (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.

19 **4.43 Reprimand is generally appropriate when a lawyer is negligent and does
not act with reasonable diligence in representing a client, and causes injury or
potential injury to a client.**

20 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes little or no actual or
potential injury to a client

21 69. The following American Bar Association Standards for Imposing Lawyer Sanctions

22
23 ¹ There is no standard that directly addresses lack of communication. Because the duty to adequately
communicate with clients is closely related to the duty to be diligent, ABA Standards 4.41 applies by
analogy.

1 (1991 ed. & Feb. 1992 Supp.) apply to Respondent's failure to be diligent:

2 4.41 Disbarment is generally appropriate when:

3 (a) a lawyer abandons the practice and causes serious or potentially serious
injury to a client; or

4 (b) a lawyer knowingly fails to perform services for a client and causes
serious or potentially serious injury to a client; or

5 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

6 **4.42 Suspension is generally appropriate when:**

7 (a) **a lawyer knowingly fails to perform services for a client and causes
injury or potential injury to a client, or**

8 (b) **a lawyer engages in a pattern of neglect and causes injury or
potential injury to a client.**

9 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes injury or potential injury to
a client.

10 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes little or no actual or
potential injury to a client.

11
12 70. Respondent knowingly failed to make reasonable efforts to assure that his non-
13 lawyer staff complied with the RPC and that his firm had in effect measures giving reasonable
14 assurance that his non-lawyer staff followed procedures compatible with the RPC. Respondent
15 negligently failed to explain to his clients that each WVF needed to be personally reviewed and
16 signed by them before submission to L&I. Respondent knowingly failed to assure that the
17 WVFs his office submitted on behalf of his clients were accurate.

18 71. Respondent's conduct caused actual and potential injury to L&I, in that forged and
19 inaccurate WVFs were submitted by his office in Mr. Wood's case. WVFs submitted on behalf
20 of other clients may also have been forged and inaccurate. Respondent's clients were
21 potentially injured as they could have been subject to criminal or civil liability for submitting
22 forged and/or false documents to L&I.

23 72. The presumptive sanction is suspension.

1 73. The following aggravating factors apply under ABA Standards Section 9.22:

2 (d) multiple offenses;

3 (i) substantial experience in the practice of law (Mr. Talbot was admitted in 1977).

4 74. The following mitigating factors apply under ABA Standards Section 9.32:

5 (a) absence of a prior disciplinary record;

6 (e) full and free disclosure to disciplinary board or cooperative attitude toward
7 proceedings;

8 (l) remorse.

9 75. It is an additional mitigating factor that Respondent has agreed to resolve this matter
10 at an early stage of the proceedings.

11 76. The mitigating factors outweigh the aggravating factors. The sanction should be
12 mitigated from a presumptive suspension to a reprimand.

13 **VI. STIPULATED DISCIPLINE**

14 77. The parties stipulate that Respondent shall receive a reprimand for his conduct.

15 78. Respondent will be on probation under ELC 13.8 for a period of one year following
16 the date of approval of this stipulation.

17 79. The conditions of probation are set forth below. Respondent's compliance with
18 these conditions shall be monitored by the Probation Administrator of the Office of Disciplinary
19 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
20 herein may be grounds for further disciplinary action under ELC 13.8(b).

21 Practice Monitor

22 a) During the period of probation, Respondent's practice shall be supervised by a
23 practice monitor. The practice monitor must be a WSBA member with no record of
24 public discipline and who is not the subject of a pending public disciplinary proceeding.

- 1 b) No later than 30 days after probation begins, Respondent shall provide to the
2 Probation Administrator, in writing, the name and contact information of a proposed
3 practice monitor, who must be approved by the Probation Administrator. If
4 Respondent fails to propose a practice monitor, or if the Probation Administrator
5 does not approve the proposed practice monitor, the Probation Administrator will
6 request that a practice monitor be appointed by the Chair of the Disciplinary Board.
7 See ELC 13.8(a)(2). Respondent shall cooperate with the appointed practice
8 monitor.
- 9 c) Respondent shall provide the practice monitor with a list of his current clients and
10 ascertain that the practice monitor does not have a conflict of interest.
- 11 d) The practice monitor must agree to be bound by the requirements of RPC 1.6,
12 prohibiting disclosure of client confidences and secrets, to the same extent as
13 Respondent and his staff.
- 14 e) During the period of probation, Respondent shall meet with the practice monitor at
15 least once every two months. At each meeting, the practice monitor will discuss
16 and review Respondent's office procedures and practices to assure that Respondent
17 and his staff are complying with the RPC when submitting documents requiring
18 client signatures to L&I or other entities. If necessary, the practice monitor will
19 review individual client files to determine if appropriate procedures are being
20 instituted and followed.
- 21 f) If the practice monitor believes that Respondent is not complying with any of his
22 ethical duties under the RPC or if Respondent fails to attend a bi-monthly meeting,
23 the practice monitor shall promptly report that to the Probation Administrator.
- 24 g) Respondent shall be responsible for paying any and all fees, costs and/or expenses
charged by the practice monitor for supervision.

VII. RESTITUTION

80. Restitution is not appropriate in this matter.

VIII. COSTS AND EXPENSES

81. In light of Respondent's willingness to resolve this matter by stipulation at an early
stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750
in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

1 **IX. VOLUNTARY AGREEMENT**

2 82. Respondent states that prior to entering into this Stipulation he had the opportunity to
3 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
4 this Stipulation voluntarily, and that no promises or threats have been made by the Association,
5 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
6 as provided herein.

7 **X. LIMITATIONS**

8 83. This Stipulation is a compromise agreement intended to resolve this matter in
9 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
10 expenditure of additional resources by the Respondent and the Association. Both the
11 Respondent lawyer and the Association acknowledge that the result after further proceedings in
12 this matter might differ from the result agreed to herein.

13 84. This Stipulation is not binding upon the Association or the respondent as a statement
14 of all existing facts relating to the professional conduct of the respondent lawyer, and any
15 additional existing facts may be proven in any subsequent disciplinary proceedings.

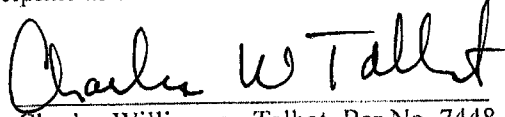
16 85. This Stipulation results from the consideration of various factors by both parties,
17 including the benefits to both by promptly resolving this matter without the time and expense of
18 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
19 such, approval of this Stipulation will not constitute precedent in determining the appropriate
20 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
21 subsequent proceedings against Respondent to the same extent as any other approved
22 Stipulation.

23 86. If this Stipulation is approved by the Hearing Officer, it will be followed by the
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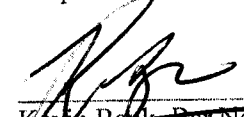
1 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
2 Enforcement of Lawyer Conduct will be made.

3 87. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
4 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
5 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
6 or criminal action.

7 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
8 to Discipline as set forth above.

9 
10 Charles Williamson Talbot, Bar No. 7448
11 Respondent

Dated: 1/3/14

12 
13 Kevin Bank, Bar No. 28935
14 Senior Disciplinary Counsel

Dated: 1/7/14